

State of Vermont

Nursing Home Administrators

Title 18 V.S.A. Chapter 46 and Administrative Rules



Nursing Home Administrators

Title 18 VSA Chapter 46

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The Vermont Statutes Online

Title 18: Health

Chapter 46: Nursing Home Administrators

§ 2051. Definitions

For the purposes of this chapter, unless the context otherwise clearly requires:

- (1) "Director" means the director of the office of professional regulation.
- (2) "Nursing home" means any institution or facility, whether proprietary or nonproprietary, defined as a nursing home for licensing purposes pursuant to subdivision 2002(7) of this title, or the equivalent facility or facilities as defined by the secretary of the United States department of health and human services.
- (3) "Nursing home administrator" means a person who is duly licensed by the director and who is charged with the general administration of a nursing home whether or not the individual has an ownership interest in the home and whether or not his functions and duties are shared with one or more other individuals.
- (4) [Deleted.] (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2005, No. 27, § 9; 2007, No. 29, § 3.)

§ 2052. Advisor appointees

(a) The secretary of state shall appoint two advisors as set forth in section 129b of Title 3. One of the initial appointments may be for less than a five-year term. One of the appointees shall have not less than three years' experience as a nursing home administrator immediately preceding appointment and shall be actively engaged in nursing home administration in Vermont during incumbency. The other appointee shall have not less than three years' experience as a licensed health care provider engaged in the care of the chronically ill.

(b) The director shall seek the advice of the advisors in carrying out the provisions of this chapter. Advisor appointees shall be entitled to compensation and necessary expenses in the amount provided in section 1010 of Title 32 for attendance at any meeting called by the director for this purpose. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 1973, No. 72, §§ 1, 2, eff. July 1, 1973; 1989, No. 251 (Adj. Sess.), § 2; 1997, No. 40, § 14; 1999, No. 133 (Adj. Sess.), § 34; 2005, No. 27, § 10; 2007, No. 29, § 3.)

§ 2053. Director; duties; powers

(a) The director shall:

- (1) set requirements for licensure;

- (2) provide general information to applicants;
- (3) explain complaint and appeal procedures to licensees, applicants, and the public;
- (4) receive applications for licensure; license applicants under this chapter; renew licenses; and revoke, reinstate, or condition licenses as ordered by an administrative law officer.

(b) The director may:

- (1) adopt rules concerning continuing education requirements;
- (2) adopt rules necessary to perform his or her duties under this chapter;
- (3) adopt rules of professional conduct. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2005, No. 27, § 11; 2007, No. 29, § 3.)

§ 2054. Exclusive jurisdiction of the director

The director, with the advice of the advisors appointed under this chapter, shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and a licensee under the provisions of this chapter shall be qualified to serve as the administrator of a nursing home. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2007, No. 29, § 3.)

§ 2055. General requirements for licensure

A person may not practice nursing home administration in this state unless:

- (1) the applicant has made written application for license to the director, accompanied by satisfactory proof that he or she is at least 18 years of age and is not in violation of the rules regarding this profession or Vermont law;
- (2) in the judgment of the director, the applicant has satisfactorily completed a course of instruction or training and met the requirements adopted by rule; or
- (3) the applicant has passed an examination administered by the director or his or her designee which is designed to test for proficiency and competence and an examination covering Vermont statutes and rules relating to nursing home administration. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2005, No. 27, § 12; 2007, No. 29, § 3.)

§2056. omitted.

§ 2057. Licensing

(a) The director shall license nursing home administrators in accordance with rules adopted, and from time to time revised. A nursing home administrator's license may not be transferred and shall be valid until surrendered for cancellation or suspended or revoked for violation of this chapter or any other laws or regulations relating to the proper administration and management of a nursing home. Denial of issuance or renewal, suspension, or revocation under any section of this chapter shall be appealable in the manner provided in section 130a of Title 3.

(b) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the director. Renewals of licenses shall be granted as a matter of course, unless an administrative law officer finds, after due notice and hearing, that the applicant has acted or failed to act in such manner, or under circumstances, as would constitute grounds for suspension or revocation of a license. The director may by rule require that a license holder complete not more than 40 hours of approved instruction every two years as a condition of renewal. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 1971, No. 185 (Adj. Sess.), § 186, eff. March 29, 1972; 1993, No. 108 (Adj. Sess.), § 16; 2007, No. 29, § 3.)

§ 2058. License fees

Applicants and persons regulated under this chapter shall be subject to the following fees:

(1) Application \$325.00

(2) Biennial renewal \$400.00 (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 1975, No. 118, § 91, eff. July 1, 1975; 1989, No. 250 (Adj. Sess.), § 86; 1991, No. 167 (Adj. Sess.), § 58; 1997, No. 59, § 46, eff. June 30, 1997; 1999, No. 49, § 168; 2001, No. 143 (Adj. Sess.), § 18, eff. June 21, 2002.)

§ 2059. Licensure by endorsement

The director may issue a nursing home administrator's license, without examination for proficiency and competence, to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the director finds that the standards for licensing in the other jurisdiction are substantially equivalent to those in this state. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2005, No. 27, § 13; 2007, No. 29, § 3.)

§ 2060. Violations and penalties

A person who practices, or offers to practice, nursing home administration in this state, without being licensed in accordance with this chapter; or any person presenting or attempting to use as his own the license of another; or a person who gives any false or forged evidence of any kind in attempting to obtain a license; or a person who falsely impersonates another licensee; or a person who attempts to use an expired or revoked license or any person who violates any of the provisions of this chapter, shall be subject to the penalties provided in subsection 127(c) of Title 3. (Added 1969, No. 248 (Adj. Sess.), § 2, eff. April 1, 1970; amended 2007, No. 29, § 3.)

§ 2061. Provisional license

In the event of the inability of the regular licensed administrator of a nursing home to perform his or her duties or if, through death or other causes a nursing home is without a licensed administrator, a provisional administrator may, in the discretion of the director, be issued a provisional license to administer that home for a period not to exceed 90 days from the date on which the regular licensed administrator first ceased to perform his or her duties. The director shall not renew such a provisional license, nor shall the director issue a provisional license to any other person to administer a home which has been administered for the preceding 90 days by a provisional administrator. (Added 1973, No. 72, § 4, eff. July 1, 1973; amended 2005, No. 27, § 14; 2007, No. 29, § 3.)

Unprofessional Conduct Standards for All Professions

§ 127. Unauthorized practice

(a) When the office receives a complaint of unauthorized practice, the director shall refer the complaint to the appropriate board for investigation.

(b) A person practicing a regulated profession without authority may, upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation, be enjoined therefrom by the superior court where the violation occurred or the Washington County superior court and may be assessed a civil penalty of not more than \$1,000.00. The attorney general or an attorney assigned by the office of professional regulation may elect to bring an action seeking only a civil penalty of not more than \$1,000.00 for practicing a regulated profession without authority before the board having regulatory authority over the profession. Hearings shall be conducted in the same manner as disciplinary hearings. A civil penalty imposed by a board or administrative law officer under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board members and advisor appointees. The director shall detail in the annual report receipts and expenses from these civil penalties.

(c) In addition to other provisions of law, unauthorized practice shall be punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation under this section and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(d) A person practicing a licensed profession without authority shall not institute any proceedings in this state for the enforcement of any right or obligation if at the time of the creation of the right or obligation the unlicensed person was acting without authority.

(e) The provisions of this section shall be in addition to any other remedies or penalties for unauthorized practice established by law. (Added 1989, No. 250 (Adj. Sess.), § 1; amended 1995, No. 138 (Adj. Sess.), § 12, eff. May 1, 1996; No. 171 (Adj. Sess.), § 8, eff. May 15, 1996; 2003, No. 60, § 1; No. 66, § 84; 2005, No. 27, § 3; 2005, No. 148 (Adj. Sess.), § 2.)

§ 128. Unprofessional conduct to be reported to board

(a) Any hospital, clinic, community mental health center or other health care institution in which a licensee performs professional services shall report to the appropriate board, along with supporting information and evidence, any disciplinary action taken by it or its staff, after an initial investigation or hearing in which the licensee has been afforded the opportunity to participate, which limits or conditions the licensee's privilege to practice or leads to suspension or expulsion from the institution. The report shall be made within ten days of the date such disciplinary action was taken, regardless of whether the action is the subject of a pending appeal, and in the case of a licensee who is employed by, or under contract with, a community mental health center, a copy of the report shall also be sent to the commissioner of mental health and mental retardation. This

section shall not apply to cases of resignation, separation from service, or changes in privileges which are unrelated to:

- (1) a disciplinary or adverse action;
- (2) an adverse action report to the National Practitioner Data Bank;
- (3) an unexpected adverse outcome in the care or treatment of a patient;
- (4) misconduct or allegations of misconduct;
- (5) the initiation or process of an action to limit, condition, or suspend a licensee's privilege to practice in an institution;
- (6) an action to expel the licensee from an institution; or
- (7) any other action which could lead to an outcome described in subdivisions (1) through (6) of this subsection.

(b) Within 30 days of any judgment or settlements involving a claim of professional negligence by a licensee, any insurer of the licensee shall report such information to the appropriate board, regardless of whether the action is the subject of a pending appeal.

(c) Information provided to a board under this section shall be confidential unless the board decides to treat the report as a complaint in which case the provisions of section 131 of this title shall apply.

(d) A person who acts in good faith in accord with the provisions of this section shall not be liable for damages in any civil action.

(e) A person who violates this section shall be subject to a civil penalty of not more than \$1,000.00. (Added 1989, No. 250 (Adj. Sess.), § 1; 1995, No. 126 (Adj. Sess.), § 1; amended 2001, No. 129 (Adj. Sess.), § 1, eff. June 13, 2002.)

§ 129. Powers of boards; discipline process

(a) In addition to any other provisions of law, a board may exercise the following powers:

- (1) Adopt procedural rules governing the investigatory and disciplinary process.
- (2) Issue subpoenas and administer oaths in connection with any authorized hearing, investigation or disciplinary proceeding. Subpoenas may be issued ex parte by the chair of the board, the director, or any attorney representing a party. Depositions may be taken after charges upon due notice to all parties without specific authorization by the board.
- (3) Issue warnings or reprimands, suspend, revoke, limit, condition, or prevent renewal of licenses, after disciplinary hearings or, in cases requiring emergency action, immediately suspend, as provided by section 814 of this title. In a case involving noncompliance with

a statute or rule relating to administrative duties not related to patient, client, or customer care, a board or hearing officer may determine that ordering a monetary civil penalty does not constitute a finding of unprofessional conduct.

(4) Reinstate or deny reinstatement of a license which has been revoked, suspended, limited or conditioned.

(5) Discipline any licensee or refuse to license any person who has had a license revoked, suspended, limited, conditioned, or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct.

(6) Notify relevant state, federal and local agencies and appropriate bodies in other states of the status of any disciplinary case against an applicant or licensee, provided the board has taken disciplinary action or has served a notice of charges against the person.

(7) Refuse to accept the return of a license tendered by the subject of a disciplinary investigation or refuse to allow an applicant who is the subject of a disciplinary investigation to withdraw his or her application without permission of the board.

(8) Adopt rules governing the issuance of licenses to practice, to persons licensed and in good standing to practice in another jurisdiction, that authorize the holder of the license to practice in this state for no more than 10 days or 80 hours in any calendar year upon payment of the required fee.

(9) For good cause shown, waive fees when a license is required to provide services on a pro bono basis or in accordance with standards established by the board by rule.

(10) Issue temporary licenses to health care providers and veterinarians during a declared state of emergency. The health care provider or veterinarian to be issued a temporary license must be currently licensed, in good standing and not subject to disciplinary proceedings in any other jurisdiction. The temporary license shall authorize the holder to practice in Vermont until the termination of the declared state of emergency or 90 days, whichever occurs first, as long as the licensee remains in good standing. Fees shall be waived when a license is required to provide services under this subdivision.

(11) Treat as incomplete any license application submitted with a check subsequently returned for insufficient funds.

(12) Waive or modify continuing education requirements for persons on active duty in the United States armed forces.

(13) Administer a Vermont statutes and rules examination as a condition of licensure, renewal, or reinstatement.

(b) A board or the director, in the case of professions which have advisor appointees, shall receive complaints from any source, or may investigate without receiving a complaint.

(c) A board may assign one or more members of the board to investigate complaints and license applications. These members shall have the assistance of an investigator for the office and an attorney assigned by the office of professional regulation who shall be responsible for prosecuting disciplinary and licensing cases before the board. In the case of professions which have advisor

appointees, the secretary may designate one or more of the advisor appointees or other licensed or certified members of the profession to assist in the investigation. While acting in this capacity, a board member or advisor appointee shall not sit in adjudication of the case and shall not participate in ex parte communications with other board members regarding the case. A board member whose term of office expires while an investigation is pending may continue through the completion of the case. When a board is unable to assign one or more members to investigate complaints or license applications by reason of disqualification, resignation, vacancy or necessary absence, the secretary of state may, at the request of the board, appoint ad hoc members to serve on the board for investigation of that matter only. Ad hoc members shall have the same qualifications as required by law for the absent members.

(d) A board shall notify parties, in writing, of their right to appeal final decisions of the board. A board or the director shall also notify complainants in writing of the result of any disciplinary investigation made with reference to a complaint brought by them to the board or director. When a disciplinary investigation results in a stipulation filed with the board, the board or the director shall provide the complainant with a copy of the stipulation and notice of the stipulation review scheduled before the board. The complainant shall have the right to be heard at the stipulation review.

(e) When a board or the director, in the case of professions which have advisor appointees, intends to deny an application for a license, the board or director shall send the applicant written notice of the decision by certified mail. The notice shall include a statement of the reasons for the action and shall advise the applicant that the applicant may file a petition within 30 days of the date on which the notice is mailed with the board or the director for review of its or his or her preliminary decision. At the hearing, the applicant shall bear the burden of proving that the preliminary denial should be reversed and that the license should be granted. After the hearing, the board or director shall affirm or reverse the preliminary denial, explaining the reasons therefore in writing.

(f) A board may appoint a hearing officer, who shall be an attorney admitted to practice in this state, to conduct a hearing which would otherwise be heard by the board. A hearing officer appointed under this subsection may administer oaths and exercise the powers of the board properly incidental to the conduct of the hearing. When a hearing is conducted by a hearing officer, the officer shall report findings of fact and conclusions of law to the board. The report shall be made within 60 days of the conclusion of the hearing unless the board grants an extension. The board may take additional evidence and may accept, reject or modify the findings and conclusions of the hearing officer. Judgment on the findings shall be rendered by the board.

(g) A board may authorize any of the following:

- (1) Its chair to grant continuances of scheduled hearings and stays pending appeal.
- (2) Its chair or legal counsel to convene and conduct prehearing conferences.
- (3) Its legal counsel to preside at hearings for the purpose of making procedural and evidentiary rulings. The board may overrule a ruling by legal counsel under this subdivision.

(h) A board member, hearing officer or administrative law officer having a personal or pecuniary interest or the appearance of a personal or pecuniary interest in the outcome of any board decision shall not participate in deciding the matter. A board member, hearing officer or administrative law officer whose disqualification is sought shall either disqualify himself or herself or, without ruling on the request for disqualification, refer the request to the secretary of state, who shall rule on the request. The ruling of the secretary of state on a request for disqualification

shall be final and shall be subject to review only upon appeal of a final order of a board under section 130a of this title or of an administrative law officer under subsection (j) of this section. When a board is unable to convene a quorum by reason of disqualification, resignation, vacancy or necessary absence, the secretary of state shall appoint ad hoc members to serve on the board for that matter only, after consulting with the chair of the board involved. Ad hoc members shall have the same qualifications as required by law for the absent members.

(i) A board may consult with the attorney general or an attorney assigned by the office of professional regulation for the proper conduct of its affairs.

(j) Notwithstanding the provisions of section 130a of this title, hearings involving denials of licensure or disciplinary matters concerning persons in professions that have advisor appointees shall be heard by an administrative law officer appointed by the secretary of state. A party aggrieved by a final decision of an administrative law officer may appeal to the superior court in Washington County which shall review the matter on the basis of the record created before the administrative law officer.

(k) Whenever completion of certain continuing education requirements is a condition of renewal, the board may require the applicant to develop and complete a specific corrective action plan, to be completed within 90 days.

(l) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence of nor evidence of the reputation of the victim's sexual conduct shall be admitted. (Added 1989, No. 250 (Adj. Sess.), § 1; amended 1991, No. 167 (Adj. Sess.), § 63; 1993, No. 102, § 3; No. 103, § 3; 1993, No. 222 (Adj. Sess.), § 19; 1995, No. 126 (Adj. Sess.), § 2; No. 138 (Adj. Sess.), § 13, eff. May 1, 1996; No. 171 (Adj. Sess.), § 9, eff. May 15, 1996; 1997, No. 40, § 4; 1997, No. 145 (Adj. Sess.), § 2; 1999, No. 52, § 2; 1999, No. 133 (Adj. Sess.), § 2; 2001, No. 129 (Adj. Sess.), § 2, eff. June 13, 2002; No. 151 (Adj. Sess.), § 1, eff. June 27, 2002; 2003, No. 66, § 85; 2005, No. 27, § 4; 2005, No. 148 (Adj. Sess.), § 3; 2007, No. 29, § 1; 2007, No. 163 (Adj. Sess.), § 3.)

§ 129a. Unprofessional conduct

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

- (1) Fraudulent or deceptive procurement or use of a license.
- (2) Advertising that is intended or has a tendency to deceive.
- (3) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession.
- (4) Failing to comply with an order of the board or violating any term or condition of a license restricted by the board.

- (5) Practicing the profession when medically or psychologically unfit to do so.
- (6) Delegating professional responsibilities to a person whom the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them.
- (7) Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records.
- (8) Failing to make available promptly to a person using professional health care services, that person's representative, succeeding health care professionals or institutions, upon written request and direction of the person using professional health care services, copies of that person's records in the possession or under the control of the licensed practitioner.
- (9) Failing to retain client records for a period of seven years, unless laws specific to the profession allow for a shorter retention period. When other laws or agency rules require retention for a longer period of time, the longer retention period shall apply.
- (10) Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.
- (11) Failing to report to the office a conviction of any felony or any offense related to the practice of the profession in a Vermont district court, a Vermont superior court, a federal court, or a court outside Vermont within 30 days.
- (12) Exercising undue influence on or taking improper advantage of a person using professional services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or a third party.
- (13) Performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.
- (14) Failing to report to the office within 30 days a change of name or address.

(b) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes:

- (1) performance of unsafe or unacceptable patient or client care; or
- (2) failure to conform to the essential standards of acceptable and prevailing practice.

(c) The burden of proof in a disciplinary action shall be on the state to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.

(d) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed \$1,000.00 for each unprofessional conduct violation. Any money received under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board

members and advisor appointees. The director shall detail in the annual report receipts and expenses from money received under this subsection.

(e) In the case where a standard of unprofessional conduct as set forth in this section conflicts with a standard set forth in a specific board's statute or rule, the standard that is most protective of the public shall govern. (Added 1997, No. 40, § 5; amended 2001, No. 151 (Adj. Sess.), § 2, eff. June 27, 2002; 2003, No. 60, § 2; 2005, No. 27, § 5; 2005, No. 148 (Adj. Sess.), § 4.)

§ 129b. Board member and advisor appointments

(a) Notwithstanding any provision of law to the contrary relating to terms of office and appointments for members of boards attached to the office of professional regulation, all board members appointed by the governor shall be appointed for staggered five-year terms and shall serve at the pleasure of the governor. Appointments under this section shall not be subject to the advice and consent of the senate. The governor may remove any member of a board as provided in section 2004 of this title. Vacancies created other than by expiration of a term shall be filled in the same manner that the initial appointment was made for the unexpired portion of the term. Terms shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. The governor may request nominations from any source but shall not be bound to select board members from among the persons nominated. As provided in section 2004 of this title, board members shall hold office and serve until a successor has been appointed.

(b) Board members shall not serve more than two consecutive terms. Members appointed to fill a vacancy created before the end of a term shall not be deemed to have served a term for purposes of this section.

(c) Boards shall meet annually, in September or the first meeting scheduled thereafter, to elect a chair, vice-chair and secretary.

(d) Meetings may be called by the chair or shall be called upon the request of any other two board members.

(e) Meetings shall be warned and conducted in accordance with chapter 5 of Title 1, the open meeting law.

(f) Notwithstanding any provisions of law to the contrary, board members and advisors for all professions attached to the office of professional regulation shall be entitled to compensation, at a rate provided in section 1010 of Title 32, for performance of official duties and other duties directly related to the efficient conduct of necessary business of a board or the office.

(g) For advisor professions, advisors shall be appointed by the secretary of state and shall serve at the pleasure of the secretary of state. Advisor appointments shall be subject to the same conditions as those for board members under this section. (Added 1997, No. 40, § 6; amended 1997, No. 145 (Adj. Sess.), §§ 3, 5; 2005, No. 27, § 6; 2007, No. 29, § 2.)

§ 130a. Appeals from board decisions

(a) A party aggrieved by a final decision of a board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the director who shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer.

(b) The appellate officer shall not substitute his or her judgment for that of the board as to the weight of the evidence on questions of fact. The appellate officer may affirm the decision, or may reverse and remand the matter with recommendations if substantial rights of the appellant have been prejudiced because the board's finding, inferences, conclusions or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the board;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the evidence on the record as a whole;
- (6) arbitrary or capricious; or
- (7) characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) A party aggrieved by a decision of the appellate officer may appeal to the superior court in Washington county which shall review the matter on the basis of the records created before the board and the appellate officer. (Added 1993, No. 108 (Adj. Sess.), § 23, eff. Feb. 16, 1994.)

**Office of Professional Regulation
Administrative Rules for Nursing Home Administrators**

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Office of Professional Regulation

Administrative Rules for Nursing Home Administrators

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PART 1 GENERAL INFORMATION

1.1 The Purpose of Licensure Vermont Law Title 18 Chapter 46 of the Vermont Statutes Annotated gives the Director of the Office of Professional Regulation (Director) certain powers and duties to protect the public health, safety, and welfare by regulating nursing home administrators. The Director has adopted these rules to aid applicants, licensees, and the general public in understanding the requirements for this profession.

1.2 Business Address Business Correspondence related to Nursing Home Administrators should be addressed to:

Secretary of State
Office of Professional Regulation
Nursing Home Administrators
National Life Bldg., North, FL2
Montpelier, VT 05620-3402

1.3 Regular, Special and Emergency Meetings The Director, or the Office on behalf of the Director, may, as necessary, hold public meetings to solicit public input in matters pertaining to this profession.

1.4 Laws That Govern the Regulation of Nursing Home Administrators

(a) The Director is authorized by Chapter 46, Title 18 of the Vermont Statutes Annotated to adopt rules, set standards, issue licenses, and regulate the profession. The statutes are online at <http://www.leg.state.vt.us/statutes/chapters.cfm?Title=18>. The Director's authority is also conferred by subchapter III of Chapter 5 of Title 3 "Professional Regulation," the statutes creating and governing the Office of Professional Regulation (3 V.S.A. §§ 121-131). In addition to the "Professional Regulation" statutes, the Director is subject to other state laws including the "Administrative Procedure Act" (3 V.S.A. §§ 801-849), the "Open Meeting Law" (1 V.S.A. §§ 310-314), the "Access to Public Records Law" (1 V.S.A. §§ 315-320), and the "Law of Professional Regulation" (3 V.S.A. §§ 121-131). In contested cases, hearings are conducted using the Vermont Rules of Evidence, as amended by the Administrative Procedure Act. These laws set forth the rights of applicants, license holders and members of the public.

(b) The Secretary of State appoints two advisors to advise the Director as set forth in section 129b of Title 3. The requirements for advisors are set forth in 18 V.S.A. § 2052(a). The Director is required by this statute to seek the advice of the advisors in carrying out the provisions of Chapter 46 of Title 18 regulating this profession.

(c) The complete text of these laws is available at most libraries and town clerks' offices. "Vermont Statutes Online" are also available on the Internet at <http://www.leg.state.vt.us>. The statutes and rules related to nursing home administrators may be accessed through the OPR website at <http://vtprofessionals.org/>.

1.5 Administrative Rules The Director is authorized to make these rules under Chapter 46 of Title 18. In making or revising rules, the Director must follow the Administrative Procedure Act

("Act"). These rules are approved by the Vermont Legislative Committee on Administrative Rules and have the force of law. 3 V.S.A. § 845(a).

1.6 Definitions In addition to the definitions found in 18 V.S.A. § 2051, the following definitions apply to these rules:

(a) "Approved Program or Activity" is a continuing education program or activity which meets the standards set forth in these rules, and which has received approval by the Director.

(b) "Director" means the Director of the Office of Professional Regulation. Where appropriate, the Director may delegate duties regarding the administration of this profession to staff of the Office of Professional Regulation. Therefore, as used in these rules the term "Director" may include staff of the Office of Professional Regulation to whom the Director has delegated specific duties. The Director retains ultimate legal responsibility and authority for those duties.

(c) "Hour" of continuing education means a clock hour spent by a licensee in actual attendance at and completion of an approved continuing education activity. Clock hours may not include travel time, lunch or breaks.

(d) "Licensee" means any person licensed to practice nursing home administration in the State of Vermont.

PART 2 INFORMATION FOR APPLICANTS

2.1 Applications

(a) Applications for a license and information about the application process are available from the Office. An applicant shall submit a fully completed application form with all supporting documentation and the fee to the Office.-Applications are reviewed only after the fully completed application and documentation are received, including evidence of any required education, supervision, employment, training, or evidence of a license in another jurisdiction and its licensing standards.

(b) An applicant issued an initial license within 90 days of the renewal date will not be required to renew or pay the renewal fee. The license will be issued through the next full license period. An applicant issued an initial license more than 90 days prior to the renewal expiration date will be required to renew and pay the renewal fee.

2.2 License by Examination

(a) To qualify to take the exam, the applicant must meet the following criteria:

- (1) be at least 18 years of age;
- (2) hold at least a bachelor's degree from an accredited institution;
- (3) Violation of 3 V.S.A. § 129a may be grounds for denial or conditioning of a license under these rules;
- (4) be mentally and physically able to perform as a licensed nursing home administrator; and
- (5) have completed an administrator-in-training program approved by the Director.

(b) The Director may consider experience as a licensed Nursing Home Administrator in lieu of the educational requirements.

2.3 Administrator-in-Training Program

(a) The Director has the exclusive authority to determine the qualifications, skill and fitness of any person to serve as a nursing home administrator and shall develop, impose and enforce standards designed to insure that nursing home administrators are, by training or experience in the field of institutional administration, qualified to serve as nursing home administrators. The former Board and the Director have determined that an administrator-in-training program is necessary to protect the public by insuring that nursing home administrators are experienced and qualified.

(b) Administrator-in-training (AIT) program components:

- (1) Content: The AIT program shall cover the subjects specified in the National Association of Long Term Care Administrator Boards (NAB) Five Step Program Administrator in Training Internship Manual and AIT, as it may be amended from time to time, which is available from the NAB.
- (2) Plan: The applicant must file a proposed plan for the AIT program for approval prior to starting the program. The plan must be submitted on forms provided by the Office and shall include the name and qualifications of the proposed preceptor.
- (3) Supervision: The program must be completed under the supervision of a preceptor approved by the Director. "Supervision" means on-site supervision (on the premises of the facility). The supervisor must be readily available to assist and answer questions, but may be off the premises for limited periods of time for vacations, conferences, etc. but still must be available by phone, not to exceed an average of more than one day per week.
- (4) Preceptors: To qualify for approval, preceptors must be currently licensed and in good standing as a Nursing Home Administrator in this state and have at least five years of experience as a licensed Nursing Home Administrator.

(5) Hours: The program must cover 1,000 total hours in the areas specified and must be completed within two years.

(6) Report: At the completion of the training program, the applicant must submit a final report, approved by the preceptor, verifying the completion of the training program. The report must be submitted on forms provided by the Office.

(c) Waiver of hours: The director may waive the AIT program requirement or reduce the number of hours needed if in the Director's discretion it is determined that the applicant has gained practical experience that would satisfy the components of the program in the specific program areas. Some examples include, but are not limited to:

(1) A Nursing Home Administrator licensed in another state with relevant experience in a long-term care facility but who has not completed an AIT program.

(2) Relevant experience as a currently licensed registered nurse in a long-term care facility.

(3) Relevant training in a long-term care facility received as part of a practical component of a course of study in long-term care administration.

(4) Participation in an AIT program in another state which is substantially equivalent to Vermont's.

(5) Relevant courses of instruction and training offered in Vermont or elsewhere for persons who wish to become nursing home administrators.

(d) Endorsement: Applicants who have completed an AIT program in another state which the Director determines to be substantially equivalent to Vermont's will not be required to complete an AIT program in Vermont prior to licensure.

2.4 Examinations

(a) Applicants who are approved will be scheduled for examination in Vermont.

(b) Applicants must successfully complete a written examination given by the National Association of Boards of Examiners of Long Term Care Administrators (NAB) and a jurisprudence examination on the laws in the State of Vermont, which may cover these rules, the statutes contained in 18 V.S.A. Chapter 46, 3 V.S.A. Chapter 5, Subchapter 3, and the licensing and operating rules and regulations for nursing homes as per the Department of Disabilities, Aging and Independent Living, as amended.

(c) An applicant who fails the exam given by NAB may retake it as permitted by the NAB. A new application and fee must be submitted each time.

(d) After successful completion of the NAB examination, the applicant may schedule to take the Vermont examination. An applicant who fails the Vermont exam may retake it.

2.5 Licensure by Endorsement An applicant who is licensed and in good standing in another jurisdiction, whose licensing requirements are substantially equivalent to Vermont's may apply for a license without written examination for proficiency and competence. The applicant must still successfully complete the Vermont jurisprudence examination and meet continuing education requirements. A license may be denied, limited, or conditioned if the applicant has engaged in unprofessional conduct.

2.6 License Denials, Hearings, Appeals

(a) The Director will notify applicants in writing of all decisions to either grant or deny a license or license renewal. If a license or renewal is denied, the Director will give the applicant specific

reasons and will also inform the applicant of the right to appeal the decision. This is called a "preliminary denial."

(b) The Director most often issues a preliminary denial of licensure or renewal when it appears from the application and accompanying documents that the applicant does not meet all of the requirements for licensure. When this occurs, the applicant is notified of the right to file an appeal which is heard as a formal hearing by an administrative law officer. At the hearing the burden of proof is on the applicant to show that the preliminary denial was in error. After that hearing the administrative law officer issues a final decision in writing.

(c) A party aggrieved by a final decision of an administrative law officer may appeal that decision to the Washington Superior Court which shall review the matter on the basis of the record created before the administrative law officer.

(d) Information about the appeal process may be obtained from the Office or online at <http://vtprofessionals.org/>.

PART 3 INFORMATION FOR LICENSED NURSING HOME ADMINISTRATORS

3.1 Renewal

(a) Licenses are issued for a two year period. Before the license expiration date, the Office will send notice of the upcoming renewal. A license will expire automatically if the complete renewal application, along with proof of completion of the required continuing education and renewal fee are not submitted to the Office by the expiration date.

(b) Those who practice as nursing home administrators after expiration of a license are subject to late fees before renewal and unprofessional conduct prosecution or other penalties.

3.2 Lapsed Licenses

A lapsed license may be reinstated within 5 years of expiration upon payment of the renewal fee and late renewal penalty, and verification of completion of continuing education for the last renewal period. A licensee whose license has lapsed for more than 5 years, must successfully complete the NAB examination and the Vermont jurisprudence examination before a license may be reinstated.

3.3 Continuing Education

(a) Licensed nursing home administrators are required to continue their education in areas directly related to nursing home administration. Continuing education in nursing home administration is defined as specific learning experiences designed to enhance the knowledge and skills of nursing home administrators.

(b) Biennial Renewal Requirements:

(1) First Renewal: If a licensee is first licensed during the first 12 months of the biennium, the licensee shall complete at least 20 hours of continuing education for the first renewal. If a licensee is first licensed during the second year of the biennium, the licensee is not required to complete continuing education for the first renewal.

(2) Subsequent renewals: For each subsequent renewal, a licensee shall accrue 40 hours of continuing education during the two year period immediately preceding the date of license renewal.

(c) Carry-over of continuing education credit will not be permitted from one biennium to the next.

(d) Record keeping requirements: Licensees shall maintain and upon request submit copies of certificates of attendance or transcripts which demonstrate completion of the requirements. Evidence of the completion of the total 40 hour requirement shall be submitted before licenses are renewed.

(e) A licensee whose continuing education submissions are not approved shall be given a notice from the Office that the education requirements are not satisfied. The licensee will have 90 days from the date of that notice to develop a corrective plan approved by the Director and complete that plan.

(f) The Director may temporarily waive the continuing education requirements of this policy in cases of extreme hardship.

3.4 Continuing Education: Course Content and Providers

(a) The subject matter of each course shall be directly related to the duties and responsibilities of a nursing home administrator and in one of these areas:

- (1) Patient and Resident Care;
- (2) Personnel Relations;

- (3) Management and Law;
- (4) Business and Finance;
- (5) Governmental Regulations
- (6) Promoting Culture Change.

(b) Approved Courses:

- (1) Certain organizations and the continuing education courses they offer are pre-approved by the Director. A list of the currently approved course providers is available from the Office or via the web site <http://vtprofessionals.org>.
- (2) Courses from Providers who have not been pre-approved. Courses of study offered by an education institution, association, professional society, or organization for the purpose of providing continuing education for nursing home administrators, not on the list of approved course providers, shall be submitted for approval on forms provided by the Office. Licensees may avoid the risk of a course not being approved by requesting pre-approval. This is done by submitting course information on the continuing education approval application form which is available from the office or on-line.

(c) Distribution of Continuing Education Hours: Hours must be taken in more than one of the categories in 3.4(a) above.

- (1) Academic Credits: The Director shall approve for continuing education credit those courses taken for college academic credit if the content meets the criteria set forth in this rule and a transcript including a passing grade from the college is presented with a course outline. Each college credit may count for 15 hours continuing education.
- (2) Distance learning and web based continuing education: Continuing education credits shall be granted for successful completion of Director approved distance learning courses. Proof of completion shall be presented with a course outline.
- (3) Workshops, Seminars & Conferences: Attendance at workshops, seminars and conferences related to the role of Nursing Home Administrators in the approved categories of 3.2(a) are considered for approval.
- (4) Other categories: No credit will be granted for professional activities, publishing, or serving as an administrator-in-training.

3.5 Change of Name or Address A licensee shall notify the Office in writing within 30 days of any changes of name, mailing address, or business address. A licensee notifying the Office of a change in his/her name must submit proof of the legal change in name.

3.6 Unprofessional Conduct and Penalties The Director may refuse to issue or renew a license or may suspend, revoke reprimand or otherwise limit or condition a license if the licensee violates any provisions 3 V.S.A. §129a, which includes violations of these rules or any other laws or regulations relating to the proper administration and management of a nursing home.

3.7 Complaint Procedure

The Office follows the current investigation and disciplinary procedure adopted by the Office of Professional Regulation, except where these rules provide otherwise. Copies of the procedure, complaint forms and more information about the complaint process may be obtained from the Office.

Effective March 15, 2009

APPROVED COURSE PROVIDERS

AHCA	American Health Care Association (Including state chapters) (Vermont Health Care Association—VHCA)
ACHCA	American College of Health Care Administrators (Vermont College of Health Care Administrators)
AAHSA	American Association of Homes and Services (Vermont Association of Homes and Services)
AHAHS	American Hospital Association and Health Systems (Vermont Hospital Association)
CMS	Centers for Medicare & Medicaid Services
JCAHO	Joint Commission for Accreditation of Health Care Organizations
NAB/NCERS	National Continuing Education Review Service
NEHA	New England Hospital Assembly
NEGA	New England Gerontological Association
NHCQF	Northeast Health Care Quality Foundation

All courses presented by the approved providers on this list are accepted for NHA renewals.

Additional courses presented by providers not on this list may be approved periodically following application for approval. For more information on obtaining and submitting continuing education course approval forms, and for the list of currently approved courses, see our website at:

http://vtprofessionals.org/opr1/nursing_homes/